89-1779

Supreme Court, U.S.
FILED
MAY 14 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

BEULAH V. BOOKER,
PETITIONER

versus

PAUL D. RILEY, JUDGE, et al.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO
SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR CERTIORARI

BEULAH V. BOOKER
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550

QUESTIONED PRESENTED FOR REVIEW

1. Whether or not a state judge in a worker's compensation injury be granted judicial immunity when he conspired and dismiss the complaint which had been refused to be dismiss by two state judges and the Appeal court. The attorneys failed to file for occupational disease but file for dismissal on grounds that Plaintiff failed to file her appeal correctly, which the Judge refuse to dismiss and call it "moot."

2. Whether or not the Appeal Court and the District Court denied Petitioner her constitutional rights, 42 U.S.C. 1983, Pierson v. Ray, 386 U.S. 547. (1967); Ashelman v. Pope, 793 F .2d 1072 (9th Cir. 1986).

TABLE OF CONTENT

	Page
QUESTIONS PRESENTED.....	i
TABLE OF CONTENT.....	ii
TABLE OF CITATIONS.....	iii
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS.....	2
STATEMENT OF THE CASE.....	3
ARGUMENT.....	16
CONCLUSION.....	25
CERTIFICATE OF SERVICE.....	27
APPENDIX 1.....	28
APPENDIX 2.....	31
APPENDIX 3.....	42
APPENDIX 4.....	46
APPENDIX 5.....	48

TABLE OF CITATIONS

Page

Cases

Anderson v. Liberty Lobby, Inc.
477 U. S. 242 (1986.

Ashelman v. Pope
793 F .2d 1072 (9th cir. 1986)

Bill v. Hummel,
835 F .2d 877 (6th cir. 1987)

Bradley v. Fisher,
13 wall 335, 347 20L. ED 646 (1982)

Booker v. Riley, et al,
89-3663

Candem Phar. v. Elder Phar.
862 F .2d 597 601 (6th Cir. 1988)

Daniel v. Bd of Education
805 F .2d 203 207 (6th Cir. 1986)

Flagg Bros. v. Brooks,
436 U.S. 149, 155 (1978)

Harris v. Harvey,
605 F .2d 330 (7th Cir. 1979)
445 U.S. 938 (1980)

Martin Marietta v. Bendix Corp.
690 F.2d 558 (6th Cir. 1982)

Pierson v. Ray
386 U.S. 547 (1967)

Table of Citations Continued

Cases — Page

Pulliam v. Allen,
466 U.S. 522 (1985)

Rankin v. Howard,
633 F .2d 844 (9th Cir. 1980)
at 847

Robinson v. Delco Moraine et al.,
85-3569

Stump v. Sparkman,
Duke L.J. 879 (1980)

Tower v. Glover,
467 U.S. 914, 920 (1984)

Winston v. Lear-Sigler,
558 F .2d 1266 (1967)

Statutes

42 U.S.C. 1981

42 U.S.C. 1983

42 U.S.C. 1985

42 U.S.C. 1986

Others

Fed. Rule App. P. 34 (a)

Fed Rule Civ. P. 12 (e)

OPINIONS BELOW

The opinion of the United States Sixth Circuit Court of Appeals is reported at Booker v. Riley, et al, 89-5663. The opinion of the United States District Court for the Southern District of Ohio Western Division is reported at Booker v. Riley, et al, C-3-87-354.

JURISDICTION

The Judgment of the U. S. Court of Appeal was entered on March 13, 1990; see Booker v. Riely, et al, Appendix A. This petition for Certiorari to the Supreme Court is filed within sixty (60) days of the Judgment below.

The Statutes under which the Appeal to this court is 28 U.S.C. 1254 (3), 28 U.S.C. 1255 (2).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment of the Constitution provides;

> Congress shall make no law adbridging the freedom of speech or the right of the people to petition the Government for a redress of grievances.

The Seventh Amendment of the Constitution provides in pertinent parts;

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

The Fourteenth Amendment of the Constitution provides in pertinent parts;

> All persons born or naturalized in the U.S.A. and subject to the jurisdiction thereof are citizens of the U.S.A. and of the State... no state shall make or enforce any law which shall abridge the priviliges or immunities or citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case involves three separate actions; a former county visiting judge, Paul E. Riley, an attorney-at-law, Gary T. Brinsfield and a Corporation, Delco Moriane, G.M.C., who was sued by Petitioner, Beulah W. Booker, in the United States District Court for the Southern District of Ohio for conspiracy, 42 U.S.C. Section 1985, discrimination, 42 U.S.C. Section 1981 and deprivation of rights, 42 U.S.C. Section 1983, on 7-15-1987. In 1987, Petitoner had a worker's compensation trial in Montgomery County Common Pleas Court by visiting Judge Paul E. Riley, where Petitioner stated she had an unfair trial, which the record will show.

This case had been pending in court since 1983 and had been assigned to Judge Wolfe until he moved up and was replaced by Judge Richard Dodge, who

BEST AVAILABLE COPY

not agree on a settlement Judge Dodge stated he was the trial Judge and all motions that he had ruled upon would stand: Due to the fact this was a civil case (at this time he was trying a criminal case which would run over into the time for this case) he refused to postpone this case again; he would transfer this case to a visiting Judge, Judge Paul Riley for trial to began as schedule. At this time Defendant attorney, Joseph P. Buchanan, asked to be withdrawan from the case and that attorney Gary T. Brinsfield be assigned attorney of record to the case. The next day when Plaintiff went to work it was told in front of her by Plant protection to some of her subpoena witnesses that the trial was cancelled. Other subpoenas which was supposed to be delivered to her other witnesses by the Sheriff department was returned.

She immediately contacted Judge Dodge's office who confirmed trial was still on. Plaintiff filed a list of contemps including one for each of her doctors who performed surgeries on her, who had tried to evade their subpoenas and for witness harassing.

On January 24, 1986, trial began only three of Plaintiff witnesses was there out of about twenty or thirty. These witness was to testify to how they had been injuried and how other employees had been injuried at work and to Plaintiff injuries.

On the morning of the trial when Plaintiff went to Judge Riley Chambers Attorney Gary T. Brinsfield was already there in the chambers discussing the trial. Plaintiff introduce herself to Judge Riley as the Plaintiff, he replied Mrs. Booker drop your complaint you are not going to talk about being injuried in

my courtroom do you understand?. Judge Riley & Gary Brinsfield both stated drop your complaint and go back home, you are not going to win; Gary Bringsfield stated you are going to lose badly and pay all fees, this I promised. Plaintiff stated this is not just an injury but a force injury, I have proof by my disciplinary write up, (these were the same words forced injury & disciplinary-write-up that Plaintiff explain to Judges Wolfe & Dodge which is also in the record). Plaintiff told Judge Riley and Attorney Brinsfield to look at her hands, she had two cockup splints on elbow length where they had been damaged and she had lost 85% use of both hands, one hand had been operated and the other was pending for an operation for the same problem, and that she had six doctors statement to those facts. Judge Riley constantly

stated you are not going to talk about being injuried in my courttoom this I promised you. Attorney Brinsfield stated go home and file something else; they both spoke in loud tone voices in the present of witness, Joe L. Robinson, who gave a sworn affivadit to these facts. Petitioner refused to leave and stated, she was promised a jury trial by Judges Wolfe & Dodge and this is what she wanted.

Judge Riley ordered court to began; a jury was seated. Judge Riley told attorney Bringsfield to explain the law to the jury; following this he told Plaintiff to make her opening statement. As she began, Brinsfield stated, your honor I think I am going to object, throughout her opening statement, there was many interruptions, outbursts & interferring by Brinsfield & Judge Riley, however, the words objections &

overrule was not use, say nay and so was used instead by them. It was so loud that Petitioner explain to the jury that she hoped they would understand what is going on. Judge Riley stated to her I told you, you were not going to talk about being injuried. When she object and stated she was going to appeal, he replied I don't care if you appeal it to God, you are not going to talk about injuried in my courtroom, I told you this before Court started. He than told Attorney Brinsfield to make his opening statement which had no interruptions, he had the run of the court, could speak on whatever he wanted. Plaintiff stated Brinsfield had two opening statements & she only one, Judge Riley stated so! He told her to call her witnesses & warned her not to talk about injuries.

Plaintiff first witness, Joe L.

Robinson, stated he came to her department at various times, one day in particular, he saw her sitting on her job with both hands in the air, tears streaming her face. He also witness her being disciplinary, he further testified that he went to the doctors with her and witness what they said about her condition, he also read their reports. Plaintiff two other witnesses was not allowed to talk about her nor their injuries. There was no other witnesses present to call. Plaintiff asked Judge Riley would he honor her contempt she had placed against the absentee witnesses. He stated no He would not, if you want these witnesses go get them yourself, I told you earlier in my chambers I'm not honoring nothing on your behalf. Trial was postpone until the next day.

On the second day of trial, a few other witnesses did show but was refrain by Judge Riley from talking about Plaintiff or their own injuries. One of her expert witness, Dr. Martinez, who performed surgery on her hand finally showed up after Judge Riley call him by telephone. He changed his testimony from what he had written down in Plaintiff medical record and which was in the court record. Plaintiff union representative who was supposed to testify to her discipline stated, he was not coming but going fishing. She asked Judge Riley to enforce the contempt, he replied no way.

On the third day of trial, the Defendant brought some of Plaintiff witnesses to court. Nurse, Karen Lininger, testified that Plaintiff did come to medical on various days. She stated she came up on the 12, 13,

& 18 of May 1982, stating she had injuried her hands, & that medical treated them. Plaintiff states, this is one of the same days herwitness Joe L. Robinson, stated he saw her on the job with her hands in the air crying. Another of Plaintiff witness, Jim Keaton, foreman was brought in by Defendant, but subpoena by her, testified to discipline (writing her up)on one of those days for refusing to continued working; he gave her the balance & thirty days without pay, the next step was to be fired.

Earlier, Plaintiff had motion to have Joe L. Robinson in the courtroom with her for moral support. During the pre-trial conference with Judge Dodge he granted that motion. However, at the trial when Judge Riley opened Court, Attorney Brinsfield motion for separation of witnesses because of

Robinson testimony, which was granted. However, Don Abbott, personnell manager, one of the Defendat star witness remained inside the courtroom even when Plaintiff protested. When Plaintiff witnesses came to testify to testify and saw Don Abbott it damaged their testimony for fear of repercussion.

When Plaintiff had no more witnesses to call or could not talk about her injuries, attorney Brinsfield made a motion for a Direct Verdict, & asked to write out his own dismissal, which was granted by Judge Riley. He placed in it what he wanted, attorney fees and court costs as he had promised Plaintiff in Judge Riley chambers before trial began. Plaintiff refused to sign it.

After Plaintiff was denied and could not enforce her rights in state

court, she filed a complaint in Federal Court against Judge Riley, Gary T. Brinsfield & Delco Moraine, G.M.C. for discrimination, conspiracy & deprivation of rights, judgment & injunctive relief. Plaintiff filed a list of authorities; 42 U.S.C. 1981 discrimination, Daniel v. Board of Ed. of Ravenna School Dist., 805 F .2d 203 207 (6th Cir. 1986), conspiracy, 42 U.S.C. 1985 Flagg Bros. v. Brooks, 436 U.S. 149, 155 (1978), deprivation of rights, 42 U.S.C. 1983, Martin-Marietta Corp. v. Bendix Corp. 690 F .2d 558 (6th Cir. 1982). Plaintiff submitted a sworn affividavit by Joe L. Robinson who was an eye witness to Defendants harassing of her and depriving of her rights. Plaintiff asked the court for a jury trial under the seventh amendment of the Constitution. She sub-

mitted several returned subpoenas from witnesses the Sheriff did not deliver from her trial with Judge Riley.

In the District Court,she submitted among her list of witnesses several Judges, Judge Richard Dodge & Judge Wolfe to testify to their action with the case. Defendant Riley filed for judicial immunity, Defendants Brinsfield & Delco Moraine asked for summary judgment. Judge Rice immediately granted Defendant Riley didmissal and sustained Defendants Brinsfield and Delco Moraine and overruled all of Plaintiff motions. He stated if Plaintiff wanted to refile or amend Judge Riley under Pulliam v. Allen, 466 U.S. 522 (1985), he would look at it. Plaintiff did refile, however, Judge Rice dismiss the case of all Defendants and order Plaintiff to pay their fees.

Plaintiff appeal her case to the Sixth Circuit Court of Appeals who affirmed the lower court decision and stated she presented no evidence.

ARGUMENT IN FAVOR TO THE PETITION FOR WRIT OF CERTIORARI.

The Sixth Circuit Court of Appeals affirmed the District Court decision that a Judge has judicial immunity. Petitioner states this is true when his act is judicial. Petitioner states a state judge conspired with two Defendants Delco Moraine & Gary T. Brinsfield to deprived her of her constitutional rights, a right to a trial under the seventh amendment and a fair trial under the fourteenth amendment. This case had been set-up for a jury trial by two other state Judges. Delco Moraine had used a total of five

lawers and had not beenable to get this case dismiss nor did they file a motion that this case be changed to occupational disease from injuries.

In another case Robinson v. Delco Moraine, et al, 85-3569, with the same Defendant and a worker's compensation case the Appeal Court of the Sixth Circuit stated, this Plaintiff was injuried, however the case was dismissed on failure to prosecute based upon the Defendant stating Plaintiff use a lot of attorneys, he stated Plaintiff hired and fired at will. The Appeal Court further stated, that probably with recover, Plaintiff could have taken against his former attorney who failed to prosecute, they further stated since Plaintiff did not name the state judge & his attorney as conspiracy they dismissed the casebecause it lack subject

matter jurisdiction. Petitioner states these same Defendants (Delco Moraine) used five attorneys who erred in presenting this case and could not get it dismissed. After they could not get it dismissed they conspired with the state Judge, Paul E. Riley against Petitioner & denied her constitutional rights.

On March 13, 1990, The Sixth Circuit affirmed the lower court dismissal of Paul Riley on judicial immunity for conspiracy, however, in Robinson v. Delco Moraine, supra, this same court of Appeals stated, "it is elementary that under 42 U.S.C. 1983, Flagg Bros v. Brooks, 436 U.S. 149, 155 (1978), that state action must exist to support a claim". "It is true that a private individual or entity who conspires with state officials to deprive a citizen of his constitutional rights maybe held

accountable under section 1983, Martin Marietta Corp. v. Bendix Corp., 690 F .2d 558 (6th Cir. 1982)".

In Stump v. Sparkman, History of Judicial Immunity, 1980 Duke L.J. 879, Judge Stumps actions were not judicial and hence that judicial immunity did not protect those actions...whether an act is judicial depends on the character of the act Ib 916. Petitioner states Judge Riley act was not judicial. Harris v. Harvey, 605 F .2d 330 (7th Cir. 1979) 445 U.S. 938 (1980), concerns a 1983 action by a black police officer against a state judge, the Court of Appelas the the Seventh Circuit denied the judge's defense of judicial immunity on the grounds that Judge Hawkey's attack on Plaintiff were not part of his duties Id 337.

Petitioner states that on the morning of the trial & throughout Respon

dents Riley & Brinsfield attacked her the same as the state Judge attacked the black policeman. In Bradley v. Fisher, 13 wall 335, 347 20 L.E.d 646 (1872) Powell noted that the Bradley court accepted the injustice doctrine of judicial immunity sometimes imposes because those injustices are usually mitigated by the avialiability of appeal. But where a jucicial officier acts in a manner that precludes all resort to appellate or other judicial remedies that otherwise would be avialable, the underlying assumption of the Bradley doctrine in inoperative... In sum I agree with Mr. Justice Steward that Petitioner judges actions were not "judicial" & that he is entitled to no judicial immunity from suit under 42 U.S.C. 1983 Id. 370.

Judge Rice granted Respondents

Riley judical immunity & the other Respondents summary judgment with knowledge of the affivadit, transcript & the record. Rankin v. Howard, 633 F .2d 844 (9th Cir. 1980), the Rankin court concluded that a judge's private jurior agreement to decide in favor of one party is not a judicial act., 633 F .2d at 847. Petitioner states and the record will show that Respondent Riley had a prior agreement to decide in favor of the Defendant Delco Moraine. Looking at the record of the District Court & the way Judge Rice dismiss the case his acts was in a manner that precludes all resort to appell. Judge Rice ordered Petitioner to pay the Respondents fees. Petitioner feels and the record will show this was a retialiation of him against her for filing because she refused to drop her original

complaint in state court where she was abused by Judge Riley, et al. Retialiation is itself discrimination Winston-v. Lear-Sigler,558 F .2d 1266 (6th Cir.) Judge Rice conspired alone with the other Respondents to deprive Petitioner of her rights guarantee by the Constitution under the First amendment for redress, the Seventh amendment trial by jury and the Fourteenth amendment, equal protection of the law. 42 U.S.C. 1986, action for neglect to prevent, in pertinent parts, every person who, having knowledge that any of the wrongs conspired to be done, & mentioned in Section 1985, of this title, are about to be committed, & having power to prevent or aid in preventing the commission of the same, neglects or refuses to do, if such wrongful act be committed, shall be liable to the party injured... for all damages caused by such wrongful act

which such person by reasonable diligence could have prevented...

Judge Rice was well aware of Judge Wolfe orders overruling Defendant motion to dismiss as moot on April 9, 1985. He was further aware of Judge Dodge order on January 13, 1986, setting pre-trial conference for attorneys to review their files prior to pre-trial and to be prepared to discuss discovery matters, which Defendant, Delco Moraine failed to do.

The Appeal Court & Judge Rice was aware the Defendants admitted to the following; (1) Plaintiff had planned to call thirty four witnesses, Joe Robinson testified to seeing her in May, 1982 working divider plate job (where she injuried both hands) with both hands in the air crying; that the court refused to honor her contempt.

some of her black witnesses suffer lapse of memory, that Dr. Martinez was called by Judge Riley and did change his testimony, that Plaintiff went to medical at various times in May 1982, on 12-18 and was complaining of hurting her hands and was treated, that Jim Keaton, supervison (white) in 513 department did discipline her on those days, that nurse, Karen Liniger, (white) read from Plaintiff medical report that on 5-12-82, at 9:30 A.M. Booker came to medical complaining of both hands aching, wrist weaking and applied heat and wrap both hands, that Plaintiff witness, Joe L. Robinson, was ordered out of the courtroom but Don Abbott, Defendant witness was not order out of the courtroom, they did not deny the fact that Brinsfield had two opening statement as the transcript will show.

CONCLUSION

Petitioner, Beulah W. Booker, respect and pray that this Honorable Court grant her petition for a Writ of Certiorari according to Rule 17 (c) of the Supreme Court of the United States; when a Federal Court of Appeals has decided a Federal conflict in a way in conflict with appelicable decisions of this court.

The Sixth Circuit Court of Appeals made two different decision in alike cases. In Robinson v. Delco Moraine, et al, supra, they stated when a individual or entity conspires to deprive a citizen of his constitutional rights maybe held accountable under Section 1983. In Booker v. Riley et al, 89-3663, they affirmed the District Court decision who granted Riley immunity and the other Defendants summary judgment.

They further affirmed that when a black Plaintiff uses five attorneys he is hiring and firing at will but when white Defendants uses five attorneys who forget to file a motion , they are granted summary judgment, which is itself discrimination, Daniel v. Board of Education of Ravenna Sch. Dist., supra,.

Petitioner pray that the Respondents be held liable and not be given judical immuninty nor summary judgment on conspiracy and the case be reversed back to the original lower court where Judge Wolfe dismissed the Defendant (Delco Moraine) motion as moot, he stated Plaintiff had followed the law. Petitioner pray she be granted worker's compensation.

Respectfully Submitted,

Beulah W. Booker

Beulah W. Booker
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of May, 1990, three copies of the foregoing document were deposited in a United States mailbox, postage pre-paid and served upon Thomas E. Jenks/ Christoper F. Johnson Attorneys at Law 205 East First Street Dayton, Oh. 45402 (Counsel for Defendant Riley). John D. Donaldson Attorney at Law 2580 Kettering Tower Dayton, Oh 45423 (Counsel for Defendant Gary T. Brinsfield). Joseph P. Buchanan Attorney at Law 2580 Kettering Tower Dayton, Oh 45423 (Counsel for Defendant Delco Moraine, GMC).

Beulah W. Booker
Beulah W. Booker

Subscribed to and sworn to
before me on this the 11th day of
May 1990

James G. Miller

JAMES G. MILLER, Notary Public
In and for the State of Ohio
My Commission Expires Mar. 6, 1994

APPENDIX I

No. 89-3663

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BEULAH W. BOOKER,
Plaintiff-Appellant
vs.
PAUL E. RILEY, JUDGE; GARY T. BRINSFIELD; DELCO MORINE, GMC,
Defendants-Appellees

BEFORE: MARTIN and BOGGS, Circuit Judges; and BROWN, Senior Circuit Judge.

This case has been referred to a panel of the court pursuant to Rule 9 (a), Rules of the Sixth Circuit. Upon examination of the record and the briefs this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34 (a).

Plaintiff Booker filed a civil rights action under 42 U.S.C. 1981, 1983 and 1985 in which she claimed that the named defendants acted to deny her a fair state court trial in her employment injury case. The district court granted summary judgment for all

defendants and this appeal followed. The parties have briefed the issues, Plaintiff proceeding without counsel.

Upon consideration, we find that there is no genuine issue of material fact and that the defendants are entitled to judgment as a matter of law. Canderm Pharmacal, Ltd. v. Elder Pharmaceuticals, Inc., 862 F.2d 597 601 (6th cir. 1988). The record before us does not contain any evidence in support of plaintiff Booker's claim.

Accordingly, the district court's judgment is affirmed. Rule 9 (b) (5), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT.

Leonard Green, Clerk
March 13, 1990

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BEULAH W. BOOKER,
Plaintiff,
vs.
GARY T. BRINSFIELD,
et al.,
Defendants

Case No.
C-387-354

DECISION AND ENTRY SUSTAINING MOTION OF DEFENDANTS BRINSFIELD AND DELCO MORAINE DIVISION, GENERAL MOTORS CORPORATION, SEEKING SUMMARY JUDGMENT (Doc. #20) AND OVERRULING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (DOC. #21); JUDGMENT TO BE ENTERED IN FAVOR OF DEFENDANTS AND AGAINST PLAINTIFF: MOTION FOR UNITED STATES MARSHAL TO DELIVER SUBPOENAS AND FOR MIXED JURY (DOC. #22) DEEMED MOOT: TERMINATION ENTRY

Based upon the reasoning and citations of authority set forth in the Memorandum filed by the Defendants in support of their Motion for Summary Judgment (Doc. #20) and, further, based upon the attachments to said Memorandum, this Court deems said Motion to be well taken and same is, therefore,

sustained in its entirety. Having granted the Defendants' Motion for Summary Judgment, this Court overrules a similar Motion for Summary Judgment filed on behalf of the Plaintiff (Doc. #21) and orders the entry of judgment in favor of the Defendants and against the Plaintiff herein.

In addition to the foregoing, the Court makes the following, non-exclusive, observations:

1. Pursuant to the recent United States Supreme Court opinion in Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the non-moving party. At the summary judgment stage, the trial judge's function

is not himself to weigh the evidence and to determine the truth of the matter but to determine whethere there is a genuine issue for trial. There is no such issue unless there is sufficient evidence favoring the non-moving party (in this case, Plaintiff herein) for a jury to return a verdict for that party. In essence, the inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." The latter is the situation in the case at bar. The evidence in support in support of the Plaintiff's claim is either non-existent (with regard to race or sex discrimination) or, where a scintilla of evidence does exist (i.e. state actor and/or conspiracy), same is so one-sided that the Defendants must

prevail as a matter of law.

2. Plaintiff alleges that her employer and her employer's attorney conspired with the Common Pleas Court Judge to deprive her of a fair trial on account of her race and sex in violation of 42 U.S.C. 1981, 1983 and 1985. Athough neither the employer nor the attorney would normally be a state actor, conspiracy with the state actor, herein the Judge, can convert otherwise private conduct into state action. Tower v. Glover, 467 U.S. 914, 920 (1984). Accordingly, the 1983 claim is, therefore not automatically subject to dismissal. Furthermore, there is evidence that the trial judge and the Defendants' attorney jointly tried to get the Plaintiff to drop her case and to file an alternative worker's compensation claim, to wit: an occupational

disease claim rather than an accidental injury claim. These facts are probably sufficient to permit an inference of an agreement for purposes of both 1983 and 1985.

3. Plaintiff's contention is that, in addition to the Defendant's joint attempts to get her to withdraw the appeal and to file an alternative worker's compensation claim, her efforts to present her case in court were inhibited by actions of the Judge,whereas the opposing attorney's efforts were not. In addition, the Plaintiff claims that the viability of her case, notwithstanding the Defendants' actions, is demonstrated by its having been scheduled for trial by Judge Dodge without objection from the employer's other attorney.

4. The Plaintiff has failed to show disparate treatment from which

discriminatory intent can be inferred and from which a violation of the fourteenth amendment equal protection guarantees and/or 1981 could be demonstrated. Assuming that the Plaintiff and the defense attorney in the state court proceeding are similarly situated for purposes of disparate treatment analysis, the transcript of the trial proceedings shows that the Defendant's attorney's efforts, which were received favorably by the Court, were well grounded in the law, whereas the Plaintiff's efforts which allegedly were inhibited, were not so well grounded.

5. The fact that a previous judge scheduled the case for trial, without objection from the previous defense attorney, in absolutely no way indicates any evaluation of thesufficiency of Plaintiff's evidence by that previous judge or attorney, or even that they

could have known, at that juncture, what evidence Plaintiff might be able to produce. At this juncture, the Court concludes that there is absolutely not that first scintilla of evidence of discriminatory intent with regard to sex or race. Assuming that the trial judge attempted to talk the Plaintiff out of proceeding with her case, in order to persue the alternative of dismissing same and filing for relief under the Occupational Disease Section of the Worker's Compensation Law, this court concludes that while such action might not have been a preferred judicial approach, a reading of the trial transcript reveals that the trial judge was absolutely correct in his analysis of the Plaintiff's case. Plaintiff's evidence is totally devoid of an accidental injury under the Worker's Compensation Law. whereas evidence of an

occupational disease abounds throughout the file. The transcript of the trial proceedings reveals that the Plaintiff received the fairest of trials from trial judge Paul Riley, that his rulings were uniformly correct and that he "bent over backwards" to protect the Plaintiff rights before the jury. There is no evidence that any conduct of any of the Defendants violated any of the Plaintiff rights protected by 1983, even assuming, arguendo, that one can infer the existence of an agreement between the Judge and the Defendants from their efforts to get the Plaintiff to withdraw her case. Even if one would infer an agreement between the Judge and the Defendants on the basis of that conduct, there is no evidence in the trial transcript from which an inference can be made that such an "agreement" extended to the conduct of the Defendants at trial.

6. The trial transcript, certified as required by Fed. R. Civ. P. 56, reveals that the defense attorney was not given the opportunity to make two opening statements, that the objections of the defense attorney were properly ruled upon, that the Plaintiff herein totally failed to show a compensable accidental injury within the meaning of the Ohio Worker's Compensation Law and, finally, that no ruling of the trial judge prohibited the Plaintiff's witness, Joe Robinson, from testfying that he "saw Plaintiff working on a job which was injuring her."

7. In short, there is no evidence, whatsoever, in the record upon which an allegation of discrimination on the basis of sex could be sustained. Further, there is no evidence in the record upon which areasonable jury could conclude that the Plaintiff has been

Defendants and against the Plaintiff herein.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for theSouthern District of Ohio, Western Division, at Dayton,

Walter H. Rice
United States District Judge

APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BEULAH W. BOOKER,
Plaintiff-Appellant
vs
PAUL E. RILEY, JUDGE, et al.,
Defendants

Case No. C-3-87-354

DECISION AND ENTRY ON PENDING MOTIONS (MOTIONS FOR MORE DEFINITE STATEMENT BY DEFENDANTS BRINSFIELD (DOC.#2) AND DELCO MORAINE DIVISION OF GENERAL MOTORS CORPORATION (DOC. #4) OVERRULED: MOTION TO DISMISS BY DEFENDANT PAUL RILEY (DOC.#3) SUSTAINED JUDGMENT TO BE ENTERED IN FAVOR OF DEFENDANT RILEY AND AGAINST PLAINTIFF: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (DOC. #7) OVERRULED, WITH LEAVE TO RENEW.

The motions of the Defendant Brinsfield (doc. #2) and the Defendant Delco Moraine Division of General Motors Corporation (Doc.#4), each seeking a more definite statement, pursuant to Fed. R. Civ. P. 12 (e), are each deemed to be not well taken and each is, therefore, overruled in its entirety, in view of the fact that the Court concludes that

the Plaintiff's complaint, rambling and conclusory though it might be, is not so vague or ambiguious that the moving Defendants cannot reasonably be required to frame a responsive pleading thereto.

The Motion of the Defendant, Paul E. Riley, seeking an Order of the Court dismissing the Plaintiff's complaint as to him (Doc.#3), upon the ground that said Complaint fails to state a claim upon which relief can be granted, said motion filed pursuant to Fed. R. Civ. P. 12 (b)(6), is deemed by this Court to be well taken and same is, therefore sustained in its entirety. In so ruling this Court concludes, pursuant to the reasoning and citations of authority set forth in the Memorandum of the moving Defendant in support of his motion, that the movant is indeed protected by the well established doctrine of judicial immunity.[1] Judgment will be ordered

A preliminary pretrial conference, by conference call telephone communication, will be established by this office for the purpose of setting a trial date and other dates leading to the expeditious resolution of this litigation.

Walter H. Rice
United States District Judge

APPENDIX 4

See Bill v. Hummel, 835 F .2d 877 (Table) (6th cir. 1987) Full text avialable at 1987 U.S. App. LEXIS 15690).

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

BEULAH N. BOOKER,
Plaintiff,
vs

Case No. 85-0009
(Judge Richard Dodge)

DELCO MORAINE DIVISION
GENERAL MOTORS CORPORATION,
et al.,
Defendants

AMENDED ORDER SETTING PRETRIAL CONFERENCE IN CHAMBERS FEBRUARY 5, 1986 At 4:15 P.M.

::::::::::::::::::::::::::::::

This case is hereby set for a pretrial conference in chambers on the 5th day of February, 1986 at 4:15 p.m. (A PREVIOUS ORDER SETTING THIS MATTER FOR A PRETRIAL CONFERENCE BY TELEPHONE WAS INCORRECT).

THE ATTORNEYS ARE ORDERED TO REVIEW THEIR FILES PRIOR TO PRETRIAL, AND TO BE PREPARED TO DISCUSS DISCOVERY MATTERS, APPLICABLE PRETRIAL MOTIONS, AND SETTLEMENT POSSIBILITIES. Counsel are required to meet one week prior to the pretrial to seek an amicable disposition.

SO ORDERED:

RICHARD S. DODGE, JUDGE

APPENDIX 5

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

BEULAH M. BOOKER,
Plaintiff,
vs.
DELCO MORAINE DIVISION
GENERAL MOTORS CORPORATION
et al.,
Defendants

Case No. 85-0009
(Judge William H.
Wolff, Jr.)

ORDER

Defendant Delco Moraine Division General Motors Corporation, moved the Court to dismiss on March 11, 1985.

On March 19, 1985, the Plaintiff filed an amended complaint, and on March 26, 1985, the defendant, Delco Moraine, answered the amended complaint.

It appears that the plaintiff has substantially complied with Section 4123.519, and the motion to dismiss is OVERRULED as moot.

Copies of this Order were sent to parties listed below by ordinary mail this date of filing.

APPROVED:

WILLIAM H. WOLFF, JR., JUDGE

Supreme Court, U.S.
FILED
JUN 12 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO. 89-1779

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

BEULAH W. BOOKER,
PETITIONER

V.

THE HONORABLE PAUL E. RILEY, et al.,
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT PAUL E. RILEY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

THOMAS E. JENKS
JENKS, SURDYK AND COWDREY CO., L.P.A.
205 EAST FIRST STREET
DAYTON, OHIO 45402
(513) 222-2333

BEST AVAILABLE COPY

QUESTIONS PRESENTED

Whether the District Court correctly determined that Respondent Paul E. Riley, a state trial court judge, was entitled to dismissal of the plaintiff's complaint pursuant to the doctrine of judicial immunity.

LIST OF ALL PARTIES

Petitioner: Beulah W. Booker

Respondents: Paul E. Riley
Gary T. Brinsfield
Delco - Moraine Division
of General Motors Corporation

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF ALL PARTIES	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
CONCLUSION	7
PROOF OF SERVICE - AFFIDAVIT	8

TABLE OF AUTHORITIES

Page

Ashelman v. Pope, 793 F. 2d 1072 (9th Cir. 1986) 6

Bradley v. Fisher, 13 Wall. 335 (1872) 3, 6

Cleavinger v. Saxner, 474 U.S. 193 (1985) 6

Dennis v. Sparks, 449 U.S. 24 (1980) 3

Franklin v. Meredith, 386 F. 2d 958 (10th Cir. 1967) 6

Harris v. Deveaux, 780 F. 2d 911 (11th Cir. 1986) 3

O'Bryan v. Chandler, 352 F. 2d 987 (10th Cir. 1965), cert. den. 384 U.S. 926 (1966) 6

Pierson v. Ray, 386 U.S. 547 (1967) 5

Randall v. Brigham, 74 U.S. 523 (1868) 3

Sevier v. Turner, 742 F. 2d 262 (6th Cir. 1984) 6

Stump v. Sparkman, 435 U.S. 349 (1978) 3, 4

STATEMENT OF THE CASE

This case originated in the Court of Common Pleas of Montgomery County, Ohio, in the form of a workers' compensation action filed by Beulah Booker in a pro-se capacity against Delco Moraine Division of the General Motors Corporation. Following a rather complicated pre-trial process, the case was assigned to the Honorable Paul E. Riley, a visiting judge from Clinton County, Ohio. Trial of the action was conducted on June 24, 1986, and a directed verdict was granted in favor of defendant Delco Moraine.

On July 15, 1987, the Petitioner filed a rambling complaint against Judge Riley, Delco Moraine, and Gary T. Brinsfield, the attorney who represented its interests in the workers' compensation action. According to its caption, the complaint alleged causes of action for conspiracy, discrimination, and violation of constitutional rights under 42 U.S.C § 1983. However, the underlying theme of the complaint was one of dissatisfaction with the courtroom administration and rulings of Judge Riley during the course of trial of the Petitioner's action against Delco Moraine. Much of the complaint was devoted to a rambling narrative of recalled events, perceived injustices, and miscellaneous episodes.

On July 31, 1987, counsel for Judge Riley filed an F.R.C.P. 12(B)(6) motion to dismiss the complaint on the grounds that it incorporated no allegations which were not barred by the doctrine of judicial immunity. On July 14, 1988, the District Court sustained the motion of Judge Riley and entered judgment in his favor. An appeal was lodged on July 21, 1989, in the United States Court of Appeals for the Sixth Circuit. The Court's decision thereon affirmed the decision of the district judge in a March 13, 1990 order. On May 14, 1990, a petition for writ of certiorari was filed in this Court.

SUMMARY OF ARGUMENT

The dismissal of the complaint of the Petitioner by the United States District Court for the Southern District of Ohio, as affirmed by the United States Court of Appeals for the Sixth Circuit, was in accordance with the well-established doctrine of judicial immunity. There is no question of law or constitutional issue involved in this case that justifies the grant of a writ of certiorari.

ARGUMENT

The doctrine of judicial immunity is an established principle of common law which is followed by the federal courts and those of nearly every state jurisdiction. See, e.g., Randall v. Brigham, 74 U.S. 523 (1868); Dennis v. Sparks, 449 U.S. 24 (1980); Harris v. Deveaux, 780 F. 2d 911 (11th Cir. 1986). Founded upon the need to protect the integrity and independence of the judiciary from the threat of legal action by dissatisfied litigants, the doctrine stands for the proposition that judges are immune from damages which result from actions or decisions taken in cases over which subject matter jurisdiction exists. Bradley v. Fisher, 13 Wall. 335 (1872).

A leading decision of this Court which recognized the continuing viability of the doctrine of judicial immunity within the context of 42 U.S.C. § 1983 civil rights actions is Stump v. Sparkman, 435 U.S. 349 (1978), a case which arose when an Indiana state court judge ordered the involuntary sterilization of the plaintiff. In concluding that judicial immunity was available as a defense to civil liability for damages arising from the sterilization order, this Court described the scope of the doctrine and its application to civil rights cases:

> The governing principle of law is well established and is not questioned by the parties. As early as 1872, the Court recognized that it was "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequences to himself." Bradley v. Fisher, supra, at 347, 20 L. Ed. 646. For that reason, the Court held that "judges of courts of

superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." 13 Wall, at 351. Later, we held that this doctrine of judicial immunity was applicable in suits under § 1 of the Civil Rights Act of 1871, 42 USC § 1983, for the legislative record gave no indication that Congress intended to abolish this long-standing principle. Pierson v. Ray, 386 U.S. 547, 18 L. Ed. 2d 288, 87 S. Ct. 1213 (1967).

The Court of Appeals correctly recognized that the necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him. Because "some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction...," Bradley, supra, at 352, the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in error, was done maliciously or was in excess of his authority; rather, he will be subject to liability only when he has acted in the "clear absence of all jurisdiction." 13 Wall, at 351.

Stump v. Sparkman, 435 U.S. 349 (1978) at 356-7.

According to Pierson v. Ray, 386 U.S. 547 (1967), the Civil Rights Act does not operate as an exception to the doctrine of judicial immunity. The sole avenue by which application of the doctrine may be avoided rests in judicial acts which are taken in the complete absence of subject matter jurisdiction. A judge will not be held civilly liable for decisions which are erroneous, procedurally defective, or in excess of authority. As stated by the United States Court of Appeals for the Sixth Circuit:

> First, a judicial officer does not act in the clear absence of all jurisdiction if he merely acts in excess of his authority. See Stump, 435 U.S. at 356, 98 S. Ct. at 1104; Rankin v. Howard, 633 F. 2d 844, 849 (9th Cir. 1980), cert. denied sub nom. Zeller v. Rankin, 451 U.S. 939, 101 S. Ct. 2020, 68 L. Ed. 2d (1981). The Supreme Court has held, for instance, that if a judicial officer exceeds his authority in a type of case that he normally has jurisdiction to hear, the officer has not acted in the absence of all jurisdiction. See Stump, 435 U.S. at 357 n. 7, 98 S. Ct. at 1105 n. 7; see also Lopez v. Vanderwater, 620 F. 2d 1229, 1234 (7th Cir.), cert. dismissed, 449 U.S. 1028, 101 S. Ct. 601, 66 L. Ed. 2d 491 (1980)....
>
> Second, the Supreme Court has specifically held that the commission of grave procedural errors, including those involving due process, does not constitute judicial action taken in the clear absence of all jurisdiction. See Stump, 435 U.S. at 359, 98 S. Ct. at 1106; see also Lopez, 620 F. 2d at 1234.

Sevier v. Turner, 742 F. 2d 262 (6th Cir. 1984) at 742 F. 2d 271. See also O'Bryan v. Chandler, 352 F. 2d 987 (10th Cir. 1965), cert. den. 384 U.S. 926 (1966).

The doctrine of judicial immunity is likewise not compromised by allegations of conspiracy such as those reflected by the Petitioner's complaint. Motives which generate a particular judicial act have no bearing upon application of the doctrine. Bradley v. Fisher, 13 Wall. 335 (1872); Cleavinger v. Saxner, 474 U.S. 193 (1985). Contentions of conspiracy to violate civil rights on the part of a judge have been specifically held not to avoid immunity. Franklin v. Meredith, 386 F. 2d 958 (10th Cir. 1967); Ashelman v. Pope, 793 F. 2d 1072 (9th Cir. 1986).

In the matter before this Court, all of the actions alleged in the Petitioner's complaint occurred in connection with the role of Judge Riley as presiding jurist over a state court action. Subject matter jurisdiction was accordingly present, and the district court and circuit court of appeals each ruled correctly in dismissing the complaint of the Petitioner.

CONCLUSION

It is respectfully submitted that the Petitioner has failed to sustain the burden of establishing that special and important reasons exist under Rule 19 which justify the grant of a writ of certiorari. The decisions from which this appeal is lodged do not involve any question of federal law which has not been well-established by this Court. The district court and circuit court of appeals each ruled correctly that the doctrine of judicial immunity applied to require dismissal of the complaint.

Respectfully Submitted,

Thomas E. Jenks
JENKS, SURDYK AND COWDREY CO., L.P.A.
205 East First Street
Dayton, Ohio 45402
(513) 222-2333

PROOF OF SERVICE – AFFIDAVIT

I, Thomas E. Jenks, Attorney at Law in the office of Jenks, Surdyk & Cowdrey Co., L.P.A., herein depose and say that on the 11th day of June, 1990, I served a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the United States on Beulah W. Booker, Petitioner herein, by delivering the same to Beulah W. Booker, located at 643 Miami Chapel Road, Dayton, Ohio 45408.

_____

Thomas E. Jenks
JENKS, SURDYK AND COWDREY CO., L.P.A.
205 East First Street
Dayton, Ohio 45402
(513) 222-2333

Subscribed and sworn to before me, at this day of June, 1990.

_____

Notary Public

Supreme Court, U.S.
FILED
JUL 9 1990
JOSEPH F. SPANIOL, JR.
CLERK

89-1779
NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

BEULAH W. BOOKER,
PETITIONER

VERSUS

PAUL E. RILEY, JUDGE, ET AL.,
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO SIXTH CIRCUIT COURT OF APPEALS

PETITIONER REPLY BRIEF FOR WRIT OF CERTIORARI

BEULAH W. BOOKER
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550

BEST AVAILABLE COPY

. LIST OF ALL PARTIES

Petitioner:	Beulah W. Booker
Respondents:	Paul E. Riley
	Gary T. Brinsfield
	Delco Moraine,
	Division of
	General Motors.

TABLE OF CONTENTS

	Page
LIST OF ALL PARTIES	i
TABLE OF CONTENT	ii
TABLE OF AUTHORITIES	iii
PETITIONER ANSWER TO RESPONDENT OBJECTION	1
CONCLUSION	13
CERTIFICATE OF SERVICE	18
PROOF OF SERVICE-AFFIVADIT	19

TABLE OF AUTHORITIES

Cases

Booker v. Riley
C-3-87-354

Bradley v. Fisher
347, 20 L. ed 641

Dennis v. Sparks
449 U.S. 24 (1980)

Exparte Virginia,
100 U.S. 339; 2 Harper James

Gregoire v. Biddle,
177 F .2d 579 581

Harris v. Deveaux,
780 F.2d 911 (11th cir. 1986)

Pearson v. Ray,
U.S. 386, 547 (1967)

Pulliam v. Allen,
466 U.S. 522 (1985)

Rankin v. Howard,
633 F .2d 844 (9th cir. 1980)

Randall v. Brigham,
74 U.S. 523

Others

42 U.S.C. 1981

42 U.S.C. 1983

42 U.S.C. 1985

Table of Authorities Continue

OTHERS

Section 4123.519 Ohio Revised Code

Section 4123.35 Ohio Revised Code

PETITIONER ANSWER TO RESPONDENT IN OPPOSITION TO BRIEF.

Petitioner states and the record will show that on 3-19-85, she complied with the Montgomery County Common Pleas Court order and filed a successful amended complaint. On 3-26-85, Defendant Delco Moraine answered the complaint. The Court stated, "it appears that the Plaintiff has substantially complied with Section 4123.519 and the motion to dismiss is overruled as Moot".

In Respondent Paul. E. Riley statement of the case his general complaint is that Petitioner is not an attorney but a pro se, however, she successful place her case in the court against five attorney of law by defendant Delco Moraine where

their motion for dismissal was granted as moot by the court.

In 1982, Petitioner was injuried by her employer, Delco Moraine, G.M.C. while performing her job. She filed for worker's compensation after her attorneys quit. The Bureau of Worker's compensation is a fund set aside for injuried employees, she filed in her motion to participate into the funds under Section 4123.35 Ohio Revised Code. The Defendant had more than three employees. Earlier Petitioner had been injuried by the same defendant, Delco Moraine, and had surgery on her right hand which was allowed by the Bureau of worker's compensation #746982-22.

The record will show that this case was ordered to go to jury trial on 6-24-86 by Judges Wolfe & Dodge

of the Montgomery County Common Pleas Court. The record will also show, as Petitioner has stated, once this case was transferred from Judge Dodge to Judge Riley, Defendant Delco Moraine attorney, Joseph P. Buchanan resigned from the case and Gary T. Brinsfield was added, immediately trouble began. This case is not complicated as Respondent stated nor it it rambling as he stated, however, the second day after Judge Riley and Gary Brinsfield took over the case, Brinsfield started to telling Petitioner subpoena witnesses the case had been dismissed. Respondents Riley & Brinsfield immediately started to undue and destroy the trial which had been set-up by Judges Wolfe & Dodge under Section 4123.519 Ohio Revised Code.

Respondent Riley have not denied

any portion or any parts of this complaint of conspiracy or deprivation nor discrimination, but he stated in his argument "the doctrine of judicial immunity is an established principle of common law which is followed by the federal courts and those of nearly every state jurisdiction. See, e.g., Randall v. Brigham, 74 U.S. 523 (1868); Dennis v. Sparks, 449 U.S. 24 (1980); Harris v. Deveaux, 780 F .2d 911 (11thCir.1986)".

Let the record show this was planned and executed by Respondents Riley, Brinsfield & Delco Moraine to destroy Petitioner complaint she filed in the court & Judges Wolfe & Dodge decision who are fellow judges of Paul E. Riley & judges over Montgomery County Common Pleas Court whereas Judge Riley was a visiting judge.

Respondent Riley further stated in his argument, "as early as 1872, the court recognized that it was "a general principle of the highest importance to the proper administration of justice that a judicial officer, in excersing the authority vested in him, (should) be free to act upon his own convictions, without apprehension of personal consequences to himself". Bradley v. Fisher, supra at 347, 20 L. Ed. 646".

On 7-15-87, Petitoner filed a complaint of conspiracy 42 U.S.C. 1985, deprivation of rights 42 U.S.C. 1983 & discrimination 42 U.S.C. 1981, in the District court. On 7-31-87, Respondent Riley filed a motion to dismiss on judicial immunity which was sustained by the court and dismissed. However, in Judge Rice dismissal he stated, "Plaintiff could seek to add

Judge Paul Riley as a party Defendant whom to seek prospective injunctive relief, as a remedy for which there would be no judicial immuninty under Pulliam v. Allen, 466 U.S. 522 (1985)." However, Plaintiff did refile Judge Riley as a defendant still Judge Rice dismiss the case on judicial immunity. He stated in his first dismissal that, it has come to this court's attention that Judge Paul Riley was defeated in a primary election held in May 1988, and is, as of this date, no longer serving as a State of Ohio Common Pleas Court Judge." The record will show that Judge Rice dismiss the case against his own ruling that it couldn't be dismissed. Judge Rice further stated in his dismissal, there was some indication that Judge Riley & Brinsfield tried to get Plaintiff to change

her original complaint, this was evidence of conspiracy.

On 7-21-89, Petitioner filed a Notice of Appeal and pointed out the issues of Judge Rice dismissal on judicial immunity and defeating of Riley in the election and confirmed the harrassment of Riley & Brinsfield to Plaintiff. The court of appeals stated, "upon consideration, we find that there is no genuine issue of material fact & that the Defendants are entitled to judgment as a matter of law." Petitioner states these issues alone is a violation of Rule 17 (a) of theSupreme Court in pertinent parts, "When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same manner.... also 17 (c) in

pertinent parts, "When a state court or federal court of appeals had decided an important question of federal law which has not been, but should be, settled by this court." Pulliam v. Allen, supra; Booker v. Riley, et al, supra. The court of appeals affirmed the District Court decision of judicial immunity. On 5-14-90, Petitioner filed a Writ of Certiorari.

In Respondent Riley answer on 6-11-90, he cited as a defense, the Bradley v. Fisher court, supra. However, in Bradley v. Fisher, 13 wall 355, 347 20 L.E.d.646 (1872) "Powell noted that the Bradley court accepted the injustice doctrine of judicial immunity sometimes imposes because these injustices are ususlly mitigated by the ayialiability of appeal. But where a judicial official acts in

a manner that precludes all resort to appellate or other judicial remedies that otherwise would be avialable, the underlying assumption of the Bradley doctrine in operative.... "In sum I agree with Mr. Justice Steward that Petitioner judges actions were not "judicial", and that he is entitled to no judicial immunity from suit under 42 U.S.C. 1983, Id. 370."

Petitioner states this is the same way her case was dismissed by the district & appeals courts who denied her appeals rights because Judge Riley lost the election. She further states, Judge Riley and Gary Brinsfield conspired and undermined Judge Wolfe & Judge Dodge decision who are still judges in the court of common pleas of Ohio, however, Judge Riley is not a judge, through his actions he lost

his election. Petitioner feels Judges Wolfe & Dodge had a right to come to the District Court and explain why they acted upon their own convictions; an opportunity to set forth their reasons.

Rankin v. Howard, 633 F .2d 844 (9th Cir. 1980), "the Rankin court concluded that a judge's private juror agreement to decide in favor of one party is not a judical act, 633 f .2d at 847". Based upon the record, Judge Riley had a prior agreement with Gary Brinsfield who represented Delco Moraine, the same as in Rankin's. As in Bradley v. Fisher, supra, Petitioner was not able to use the court of appeals for justice because of the way the case was dismissed by Judge Rice. According to Mr. Justice Steward in Bradley v. Fisher, supra

Respondent Riley actions were not judicial and he is entitled to no judicial immunity from suit under 42 U.S.C. 1983. A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing a judicial function; see, e. g. Exparte Virginia 100 U.S. 339; 2 Harper and James, The Law of Torts 1642-1643 (1956). "The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function. When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices".

Judge Riley conspired with Gary Brinsfield against Petitioner to deprive her of her constitutional rights to a fair jury trial which had been set up by Judge Wolfe and Judge Dodge is not a judicial act. Judge Riley exercise no discretion or individual judgment, he acted as a minister of his own prejudice and is entitled to no immunity. When Judge Rice dismissed this case, he was aware of this knowledge instead he granted the Defendants summary judgment under judicial immunity.

CONCLUSION

It is respectfully submitted and shown that the Respondent have failed to establish reasons why this Court should not grant Petitioner Writ of Certiorari. There are two special important reasons of two decisions by two different courts. (1) Judge Rice stated under Pulliam v. Allen, supra, that Respondent Riley did not have judicial immunity . He further stated Riley lost the election in May 1988, he was no longer a state of Ohio common plea court judge but granted him judicial immunity. Judge Rice further indicated there was some indication Riley & Brinsfield tried to get Plaintiff to change her complaint from Section

4123.519 Ohio Revised Code which had been set-up by two other state judges for a jury trial, after Defendant, Delco Moraine, motion for dismissal had been rendered as "moot" by Judge Dodge.

(2) The Court of Appeals confirmed the District Court decision and stated, "upon consideration, we find that there is no genuine issue of material fact and that the Defendants are entitled to judgment as a matter of law."

Respondent Riley action was not of a judicial officer but of his own ministerial act and deserve no judicial immunity under 42 U.S.C. 1983. Pearson v. Ray, 386 U.S. 547 (1967) Mr. Douglas stated, we should not protect a member of the judiciary "who is in fact guilty of using his

powers to vent his spleen upon others."

Gregoire v. Biddle, 177 F 2d 579, 581, in pertinent parts, "to deny the recovery to a person injuried by the ruling of a judge action for personal gain or out of personal motives would be "monstrous". Ibid... "It is necessary to exempt judges from liability for the consequences of their honest mistakes, but that is far different from saying a judge shall be immune from the consequences of any of his judicial actions, and that he shall not be liable for the knowing and intentional deprivation of a person's civil rights.

Petitioner states Judge Riley never stated he made a mistake. Meaning he was aware of his actions. When Petitioner brought this to his

attention during the trial, he stated you can appeal to God, but this is my court and I do as I please not the law.

In Ex Parte Virginia, supra, " a judge is liable for injury caused by ministerial act." Petitioner states that all Respondents; former judge Paul E. Riley, attorney at law, Gary T. Brinsfield and Delco Moraine, General Motors Corporation be liable for conspiracy against her to overthrow two other judges decision which did injury her.

Petitioner pray that she be compensated for her injuries by these Respondents.

Petitioner further pray that she be granted worker's compensation

under Section 4123.35 Ohio Revised Code.

Petitioner pray that her Writ of Certiorari be granted under Rule 17 (a) and Rule 17 (c) of The Supreme Court of The United States of America.

Respectfully submitted,

Beulah W. Booker
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July, 1990, copy of the foregoing document were deposited in a United States mailbox, postage prepaid and served upon Thomas E. Jenks/Christopher F. Johnson Attorneys at Law 205 East First Street, Dayton, Ohio 45402 (Counsel for Defendant Riley).

Beulah W. Booker

Beulah W. Booker

Subscribed and sworn to before
me on this the 2nd day of July
1990.

James G. Miller

JAMES G. MILLER, Notary Public
In and for the State of Ohio
My Commission Expires Mar. 6, 1994

DISTRIBUTED

SEP 4 1990

Supreme Court, U.S.
FILED
AUG 31 1990
JOSEPH F. SPANIOL, JR.
CLERK

89-1779
NO:

DOCKED

5-14-90

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

BEULAH W. BOOKER,
PETITIONER

VERSUS

PAUL E. RILEY, JUDGE, ET AL.,
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO SIXTH CIRCUIT COURT OF APPEALS

PETITIONER APPENDIX FOR WRIT OF CERTIORARI

BEULAH W. BOOKER
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550

INDEX

DOCUMENT	DOC. NO.	AP. P. NO.
J. Wol. Ord.	1	1
Dr. Mar. let.	2	2
Contempt	3	5
Rob. Affiv.	4	8
EXCERTS OF THE TRANSCRIPT & WITNESSES TESTIMONY FROM THE TRIAL OF BOOKER vs DELCO MORAINE, et al, supra.	5	11
The Court	6	11
Brin. 1st op. st.	7	12
Sep. of Wit.	8	12
Brin. 2nd op. St.	9	13
J. Rob. T.	10	14
K. Lin. T.	11	17
J. Keaton T.	12	19
P. Moore T.	13	21
Bri. Div. Ver.	14	23
Bri. Pre. T. Ent.	15	24

Index Cont.

DOCUMENT	DOC. NO.	AP. P. NO.
Wor. Comp.	16	25
Cert. of Ser.	17	27
Not. of Ser.	18	28

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

BEULAH W. BOOKER,

Plaintiff,

vs.

CASE NO. 85-9
(Judge William H. Wolff, Jr.)

DELCO MORAINE DIVISION
GENERAL MOTORS CORPORATION,
et al.,

Defendants

ORDER SETTING CHAMBERS PRE-CONFERENCE ON MAY 7, 1985 AT 8:45 A.M.

::::::::::::::::::

This case is hereby set for a pretrial conference in chambers on the 7th day of May, 1985 at 8:45 a.m.

The attorneys are ordered to review their files prior to pretrial, and to be prepared to discuss discovery matters, applicable pretrial motions, and settlement possibilities. Counsel are required to meet one week prior to the pretrial to seek an amicable disposition.

SO ORDERED

WILLIAM H. WOLFF JR., JUDGE

Copies of this Order were served on all parties listed below by ordinary mail this date of filing.

BEULAH W. BOOKER, Plaintiff, 643 Miami Chapel Rd. Dayton, Ohio 45408

ROBERT J. DAVIDEK, Attorney for Defendant Delco Moraine, 2580 Kettering Tower, Dayton, Ohio 45423

G. JACK DAVIS, JR., Attorney for Industrial Commission of Ohio, Assistant Attorney General, 803 East Fifth Street, Dayton, Ohio, 45402

Thomas Roberts, Bailiff

ENRIQUE C. MARTINEZ, M.D., INC.
Orthopaedic Surgery
333 West First Street
Dayton, Ohio 45402
(513) 222-0095

October 4, 1983

Worker's Compensation Division
Delco Moraine-Division GMC
1420 Wisconsin Blvd.
Dayton, OH 45401

Re: Beulah Booker
746982-22

Dear Sir(s):

Mrs. Booker has had multiple examinations and consultations in the past year because of a problem concerning both her wrists which have become tremendously symptomatic while preforming the job she was given which required repetitive motion with both dorsiflexion and volar flexion of the wrists.

Dr. Ronald Moser has also checked the patient in the Industrial Clinic. However, subsequent examination with Dr. Moser and myself in my office

yielded varification of the patient's bilateral distal ulnar problem which is a subluxing problem.

This is the reason for my suggestion to the patient that she have a Darrach's procedure which would minimize the subluxing problem of the ulna and she might overcome her difficulties and possibly be able to return to her previous employment.

I am sure you have received the charges for the patient's previous examinations.

Sincerely yours,

Enrique C. Martinez, M.D.

ECM/pn.

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

BEULAH W. BOOKER — CASE NO. 85-9
Plaintiff — (Judge Dodge)

vs.

DELCO MORAINE, G.M.C. et al.,
Defendants

EMERGENCY MOTION FOR CONTEMPT, REFUSING TO SERVE, INTERFERING WITH SUBPOENAS AND HARRASSMENT OF WITNESSES.

Plaintiff moves this court for contempt, O.R.C. 45 (F), against the defendants plant protection guard for failure to serve subpoenas upon the names listed below, after receiving them form the Montgomery County Sheriff Office who was designated to serve and did according to O.C.R. 45 (C).

Plaintiff demands that this guard be held in contempt of court for interfering and refusing to serve subpoenas and that he/she (John Doe) name of so said plant protection guard be brought into court and to testify to the fact before the jury that these witnesses were subpoena and documents were ordered to be brought to trial.

Plaintiff moves this court that this so-said-guard pay ten thousand dollars per/day for each witnesses who does not show for trial to give testimony and that the above amount triple and double each day. Plaintiff moves this court for the Defendant to pay all expenses of the trial O.C.R. (4).

The names of the unserved witnesses are; Lois Williams, LaDoris (Dot) Smith, Mary Brown, Cindy Lofford, Dora Hunt, and Becky McGuire, Orean Amos.

Plaintiff moves this court for so-said-guard harrassment of witnesses and slaundering remarks toward the court stating the jury trial had been cancelled. Plaintiff received information from witnesses and heard remarks by Lt. Burgess Blanton that trial had been cancelled, he did not

say change to another date, but cancelled. Later, Plaintiff was confronted by other witnesses and received telephone calls to the fact of trial cancellation.

In a telephone conversation with Judge Dodge secretary, Shirley on 6- 8-87, Plaintiff asked if the trial had been cancelled, she stated no, it will convene as stated by the Judge on June 24, 1987.

Plaintiff contacted Defendant's attorney, Brinsfield office on 6-18-87, and talked with Vicki (paralegal) and demanded this type of slaunder be stopped and corrected immediately.

Beulah W. Booker

CERTIFICATE OF SERVICE

This is to certify that a copy of this document is being sent to Gary T. Brinsfield, attorney for

Defendant, Delco Moraine, GMC, 2580 Kettering Tower, Dayton, Ohio 45423 this 19th day of June 1987, by ordinary mail.

Beulah W. Booker

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

BEULAH W. BOOKER
Plaintiff
vs
DELCO MORAINE, GMC, et al,
Defendants

CASE NO. C-3-87-354

AFFIVADIT OF JOE L. ROBINSON

State of Ohio
County of Montgomery

Affiant, Joe L. Robinson, being first duly cautioned and sworn, says that the following statements are true to the best of his knowledge:

1. On the morning of the trial, June 24, 1987, he was asked to come to Judge Riley chambers.

2. He eye witness Judge Riley & Attorney Brinsfield intimidate and harass Plaintiff and told her to go to another court, she was not going to win in this one.

3. He witness Judge Riley tell Plaintiff this is a case for occupational disease not injury and that she was not going to talk about her injuries in his court.

4. They, Judge Riley & Attorney Brinsfield, asked me to convince Plaintiff to drop the complaint, go into another room or down the hall, take as much time as you want to convince her to drop her complaint because she is not going to win.

5. He witness Mr. Brinsfield tell Plaintiff if she didn't drop the complaint, she was going to leose and lose badly and pay all costs.

6. On the witness stand, Judge Riley prohibited me from saying I saw Plaintiff working a job which was injuring her.

7. I testified that I came to Plaintiff department and saw her crying holding both hands up in the air.

8. As Plaintiff witness, I was ordered to leave the courtroom, but as the Defendant witness, Don Abbott was allowed to stay in the courtroom throughout the trial.

9. When Plaintiff complain about my leaving and Abbott staying, the court stated, this is my court I will do as I please.

10. Judge Dodge stated (at a pre-trial conference) he had no objection to my staying in the courtroom with Plaintiff for moral support. He further stated, the motions I have ruled

upon will stand.

11. Judge Riley stated to Plaintiff, it is your job to get your witnesses into court and I suggest you go and call them, I'm not signing no contempt.

Joe L. Robinson

Sworn to and subscribed before me this 12th day of August, 1988.

James G. Miller,
Notary Public
In and for the State
of Ohio My Commission
Expires Mar. 6, 1989

EXCERTS OF THE TRANSCRIPT & WITNESSES TESTIMONIES FROM THE TRIAL OF BOOKER V. DELCO MORAINE, et al, Supra.

THE COURT: Well, we're ready now for opening statements of counsel. Opening statements, again, are not evidence

and are not to be considered by you to be evidence. They are a preview of what the parties expect the evidence to show. They are designed to help you better understand the evidence as it comes to you here in the courtroom As has already been explained to you by Mr. Brinsfield, this is a statutory procedure. It's an appeal from a decision of the Industrial Commission, and the issues really in this case are whether or not Ms. Booker was injuried during the course of her employment. The date of injury is alleged to be on or about the 12th day of May, 1982, as I read from the complaint.....

MR. BRINSFIELD: Your Honor, I move for separation of witnesses.

THE COURT: Your motion will be allowed. All persons present in the courtroom who are going to testify

in this case please retire to the hallway and remain there until you are called, please.

THE COURT: This is what we discussed, you see, in chambers. You see, the issue, the whole question before us today is whether or not you suffered an injury on or about the 12th of May, 1982, as that's defined in the statute.

MR. BRINSFIELD: ..... I represent the employer, Delco Moraine Division, General Motors Corporation. Mrs. Booker brought a Worker's Compensation claim alleging that she had a condition known as carpal tunnel syndrome in her wrists and that this was caused by an accident that took place on May 12, 1982. The evidence will show that she went to hearings before the Industrial Commission, and

they told her no, it wasn't an accident but it was an occupational disease, go file under occupational disease. Instead of doing that and having her claim allowed back in 1982, she chose to pursue this case, and we're in court on that very issue.

JOE ROBINSON, called as a witness on behalf of the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MS. BOOKER:

Q. Mr. Robinson, for the record, please state where you are or where you were employed and for how long.

THE COURT: yes Do you want to give us your name andaddress for the record.

THE WITNESS: My name is Joe L. Robinson. I live at 5208 Whaley Dr. in Madison Township.

BY MS. BOOKER:

Q. Now, Mr. Robinson, would you state where you are employed or where you were employed and for how long?

A. Okay, answer to the question, I were employed at Delco Moraine for approximately 17 years.

Q. Was you and I employed at the same place?

A. Yes, we were.

Q. Do you personally know me? If so, can you explain to the jury?

A. Yes, I know you as a former employee and also we are engaged to get married.

Q. How long have you known me?

A. Approximately 10 years.

Q. Did you know me in May and June of 1982?

A. Yes. I did.

Q. On about May 12th were you familiar with my job in 513 department?

A. Yes I am.

Q. Could you explain.

A. Okay, in May and June, we were working something like 20 to 22 hours a day. On my breaks, either I come to see you or you come to see me. I came to your department where you were working, as I did hundreds of times, and I saw you on your job with both hands in the air and tears was coming down your cheeks. I asked you what was the trouble.

MR. BRINSFIELD: Objection.

THE COURT: yes, you can't repeat what she said, nor what you said to her.

THE WITNESS: I can't?

THE COURT: No, that's hearsay.

THE WITNESS: Okay, I saw tears

coming down your cheeks. You explained to me, "I'm being disciplined".

MR. BRINSFIELD: Objection.

THE COURT: Yes, that's what she said. You can't say that.

THE WITNESS: Well, you was holding both hands in the air crying.

BY MS. BOOKER:

Q. Mr. Robinson, after I returned to work from being disciplinaired, did you have an occassion to see me on the divider bearing job?

A. Yes, I did.

KAREN LINIGER

THE WITNESS, having been duly sworn, was examined and testified as follows;

BY MS. BOOKER:

Q. For the record, would you state your name and address, please.

A. Karen Lininger, 8170 Brookville-Phillipsburg Road, Brookville.

Q. Mrs. Lininger...would you state

for the record your place of employment?

A. Delco Moraine.

Q. What is your position?

A. Supervisor of the North Medical.

Q. Mrs. Lininger, have you seen me come to you in the medical department complaining that I hurt my hand?

A. Yes.

THE COURT: Could you first of all indicate what date you are referring to now?

THE WITNESS: 5-12-82, medical report, 9:30 in the morning. She was on the divider plate job. She said she was using her left hand only to build up the divider plate and now her left forearm was ~~beginning to~~ ache and her wrist felt weak. They put heat on it and wrap it. She was having problems with her right hand.

that is why she was using her left hand, I believe.

On 5-18 she came to medical at 6:00 p.m. She was on the divider plate job at that time. She was complaining of pain in both wrists. She had been on a code, which was light work, 20 pounds limit, and to avoid repetitive rotation of wrist, hyperflexion or extension of wrist perm. She was given heat and an Ace support.

JIM KEATON

the witness, having been duly sworn, was examined and testified as follows:

BY MS. BOCKER:

Q. Mr. Keaton, for the record, would you state your name and address please?

A. Jim Keaton, 3370 Little York Road, Dayton.

Q. Mr. Keaton, would you state your

position at Delco Moraine?

A. Supervisor.

THE COURT: Do you have any knowledge, Mr. Keaton, of an accident which occurred to Mrs. Booker on or about the 12th day of May, 1982? By accident, I mean something of a violent, external means, totally accidental, a sudden mishap, something which occurred by error or arising out of the ordinary, a happening out of the ordinary.

THE WITNESS: No, Your Honor, I don't. I recall several times taking disciplinary action against Beulah for not performing the job.

BY MR. BRINSFIELD:

Q. Was Mrs. Booker, did she work May 12, 1982?

A. I don't recall specifically her working May 12. My records show that

we took disciplinary action May 11, and my records show May 11 we gave her the balance of the shift, and we also took disciplinary action on the 13th. I don't recall what happened on the 12th.

PAMELA MOORE

the witness, having been duly sworn, was examined and testified as follows:

BY MS. BOOKER:

Q. Mrs. Moore, for the record, would you state your name and address, please?

A. Pamela Moore, 5817 Shady Cove Lane.

Q. Miss Moore, would you state your position with Delco Moraine?

A. I am a Registered Nurse. I work third shift. I am Staff Nurse.

Q. Miss Moore, have you seen me come down to the medical department complaining about pain in my hand?

A. Yes.

Q. To the best of your knowledge, Miss Moore, did I come down to you May---on or about May 12th through the 18th, 1982, complaining about pain in my hand?

A. Yes.

Q. To the best of your knowledge Miss Moore, around that same date, did you put heat or ice pack on my hand? Did you apply it to my hand?

A. Yes.

Q. But to the best of your knowledge, Miss Moore, I did complain I had hurt my hands on those dates

in question?

A. Yes.

MR. BRINSFIELD: At this time, we move for a directed verdict on several grounds.

MS. BOOKER: Objection, Your Honor,

THE COURT: Let him finish his motion. I will hear you in rebuttal.

MR. BRINSFIELD: As you know, this is a case involving an allegation of accidental injury taking place on a particular date in 1982. Without saying anything else, I would just remind the Court Mrs. Booker herself has never taken the stand and described an accidental injury nor has any of the witnesses who she has called in to testify described any type of accidental

injury whatsoever.

THE COURT: I don't think you and I will ever agree on this. The Court has no choice so far as I can see in this matter, it is a question of law, but to dismiss it. We will note your exception to my ruling. You have 30 days in which to bring your appeal.

MS. BOOKER: I will appeal, Your Honor.

THE COURT: You have 30 days. Bring back the jury. Thirty days from the date of the entry, I guess.

MR. BRINGSFIELD: Right, Do you want me to prepare an entry?

THE COURT: Yes, if you will, please.

WORKER'S COMPENSATION

365.05 ACCIDENTAL INJURY (New)

1. INJURY. To decide whether there was an injury and whether the injury was accidental you will apply the following definition. You may not substitute your own idea of the word injury. "Injury includes any injury, whether caused by external accidental means or accidental in character, or of gradual onset and result, received in the course of, and arising out of, the injured employee's employment".

EVIDENCE & INFERENCES.

DEFINITION. Evidence is all the testimony received from the witnesses (including depositons) and(exhibits admitted during the trial) and (facts agreed to by counsel) (and any facts which the court requires you to accept as true).

2. Evidence may be direct or circumstantial, or both.

3. DIRECT EVIDENCE. Direct evidence is the testimony given by a witness who has seen or heard the facts to which he testifies. It includes exhibits admitted into evidence during the trial.

CERTIFICATE OF SERVICE

I hereby certify that on the
day of August, 1990, copy of the fore-
going document were deposited in a
United States mailbox, postage pre-
paid and served upon
Thomas E. Jenks
Christopher F. Johnson
205 East First Street
Dayton, Ohio 45402
Counsel for Defendant, Paul E. Riley.

Beulah W. Booker
Beulah W. Booker

Beulah W. Booker

Beulah W. Booker

Sworn to and subscribed before me this 2nd day of August 1990.

LAWRENCE W. HOLLEY, Notary Public
In and for the State of Ohio
My Commission Expires: [illegible]